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NATALIE RHONE

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NATALIE RHONE, an individual,

Plaintiff,

vs.

WYNN LAS VEGAS L.L.C., a Nevada
limited liability company;

Defendant.

) Case No.: 2:18-cv-01327

) **Civil Rights**

) COMPLAINT FOR INJUNCTIVE
) RELIEF AND DAMAGES FOR
) DISABILITY DISCRIMINATION IN
) VIOLATION OF TITLE III OF THE
) AMERICANS WITH DISABILITIES
) ACT AND THE NEVADA EQUAL
) ACCESS ACT (N.R.S. §651.050 *et seq.*)

) **Jury Trial Demanded**

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1 Plaintiff NATALIE RHONE complains of Defendant WYNN LAS VEGAS
2 L.L.C., and alleges as follows:

3 4 **I. INTRODUCTION**

5 1. In this action, Plaintiff NATALIE RHONE, a person with a disability,
6 seeks redress for the discrimination she suffered when attempting to patronize a place
7 of public accommodation owned and/or operated by Defendant WYNN LAS VEGAS
8 L.L.C. Plaintiff seeks injunctive relief under Title III of the Americans with
9 Disabilities Act (“ADA”) and the Nevada Equal Access Act (“NEAA”) to have
10 Defendant modify its policies, practices, and procedures to ensure full and equal
11 access to persons with disabilities like Plaintiff. Plaintiff also seeks damages under
12 the NEAA for the unlawful discrimination she has suffered, and Plaintiff is entitled to
13 her reasonable attorneys’ fees, litigation expenses, and costs incurred in litigating
14 these civil rights claims.

15 16 **II. JURISDICTION AND VENUE**

17 2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331
18 for violations of Title III of the ADA (42 U.S.C. §12181 *et seq.*). This Court has
19 supplemental jurisdiction pursuant to 28 U.S.C. §1367 to adjudicate Plaintiff’s claims
20 under the NEAA (N.R.S. §651.050 *et seq.*) because they are related to her federal
21 claims and arise out of a common nucleus of operative facts.

22 3. Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is
23 founded on the fact that the real property at issue in this action is located in the
24 District of Nevada and that Plaintiff’s causes of action arose in this District.

25 26 **III. PARTIES**

27 4. Plaintiff NATALIE RHONE is, and at all times relevant herein was, a
28

1 qualified individual with a disability as defined by the ADA and NEAA. Plaintiff
2 suffers from severe allergies to a wide range of foods and food items. She is allergic
3 to more than thirty (30) foods, including but not limited to, certain nuts, fruits,
4 vegetables, and soy; products made with or derived from these foods; and items
5 which have been in close proximity to these foods. During an allergic reaction,
6 Plaintiff suffers anaphylaxis, which is an acute reaction that quickly causes
7 constriction of her airways, tightening of her throat, swelling, coughing, wheezing
8 and extreme difficulty breathing. Plaintiff has occasionally lost consciousness and
9 required emergency medical treatment when suffering anaphylaxis. Plaintiff's severe
10 food allergies substantially limit one or more major life activities, including, but not
11 limited to, breathing. Plaintiff is therefore a person with a disability as defined by the
12 ADA and NEAA. (42 U.S.C. §12102; N.R.S. §651.050).

13 5. Plaintiff is, and at all times relevant herein was, a resident of Woodland
14 Hills, California and a frequent and regular visitor to Las Vegas, Nevada.

15 6. Plaintiff is informed and believes and thereupon alleges that Defendant
16 WYNN LAS VEGAS, L.L.C. is the owner and/or operator of the Encore Beach Club
17 (the "Club"), which is located in the Wynn/Encore resort at 3131 S. Las Vegas
18 Boulevard in Las Vegas, Nevada.

20 **IV. FACTS UPON WHICH ALL CLAIMS ARE BASED**

21 7. At all times relevant herein and continuing to present, Plaintiff was and
22 is a qualified individual with a disability pursuant to the ADA (42 U.S.C. §12102)
23 and the NEAA (N.R.S. §651.050).

24 8. Plaintiff is a regular visitor to Las Vegas and is a member of the Wynn
25 Insider program. When visiting Las Vegas, Plaintiff prefers to stay at the Wynn and
26 Encore Resorts; she especially enjoys the Club, which she has patronized on
27 numerous occasions without incident.
28

1 9. At all times relevant herein and continuing to present, the Club was and
2 is a place of public accommodation pursuant to the ADA (42 U.S.C. §12181(7)) and
3 the NEAA (N.R.S. §651.050(3)).

4 10. At all times relevant herein and continuing to present, Defendant was
5 and is the owner and/or operator of the Club.

6 11. Plaintiff's severe food allergies result in the rapid onset of debilitating,
7 life-threatening symptoms, including the inability to breathe. To avoid and/or
8 mitigate these symptoms, Plaintiff carries with her a variety of medications which
9 have been prescribed by her doctor and/or which her doctor has mandated she use in
10 the event of exposure to an allergen. These medications include two EpiPens,
11 Prednizone, Benadryl, Claritin and Pepcid. Plaintiff must carry all of these
12 medications with her at all times, because they are used in conjunction with each
13 other to treat an allergic reaction and to stop it from progressing to a life-threatening
14 emergency.

15 12. On or around April 20, 2018, Plaintiff, her husband, and seven friends
16 sought to patronize the Club to celebrate Plaintiff's birthday. Prior to entering the
17 Club, Plaintiff and other patrons' personal belongings were searched by security
18 personnel. Plaintiff is informed and believes and thereupon alleges that the security
19 personnel are Defendant's employees, and/or that they are Defendant's agents or act
20 on Defendant's behalf to provide security services at the Club.

21 13. A security guard inspected Plaintiff's personal items and observed her
22 food allergy medications, including her EpiPens. The security guard informed
23 Plaintiff that she could not enter the Club with her medications.

24 14. Plaintiff explained to the security guard that she has severe food allergies
25 and must have those medications with her at all times to avoid life-threatening
26 emergencies that could arise from exposure to certain foods. The security guard still
27 refused to allow Plaintiff to enter to enter the Club with her medications.
28

1 15. Plaintiff then requested to speak with a manager. When he arrived,
2 Plaintiff explained to the manager that she has severe food allergies, and that she
3 must carry all of her medications with her at all times in the event of a life-
4 threatening allergic reaction. The manager examined her medications, and informed
5 Plaintiff that he would allow her to enter the Club with her EpiPens, but not with the
6 other medications. The manager also told Plaintiff that she may be able to enter the
7 Club if the medications were prescribed and if Plaintiff had a copy of the original
8 prescription with her.

9 16. Plaintiff explained to the manager that she required all of the
10 medications on her person at all times, including the non-prescription medications,
11 because they are used in conjunction with each other to stop or mitigate a life-
12 threatening emergency. She offered to show the manager a note from her doctor
13 regarding the necessity of using all of the medications with each other. Plaintiff
14 further pointed out that most of the medications were in their original packaging and
15 clearly labeled. Nonetheless, the manager continued to refuse to allow her entry to
16 the Club with her medications, instead informing her that the “medics inside the
17 Club” could assist her in an emergency.

18 17. Plaintiff then offered to deposit her medications in a box near the
19 security station, where other patrons had deposited personal items that were not
20 permitted in the Club (including medication). Although this was still risky, given the
21 rapid onset of her anaphylaxis, Plaintiff believed that keeping the medications in the
22 box right outside of the Club entrance would allow her quick access to the life-saving
23 medications in the event of an allergic reaction. The security personnel and manager
24 refused this offer, stating that the security guards “are not allowed to touch the box.”
25 Plaintiff reminded the security guards that her allergies constituted a disability and
26 requested some sort of compromise. The security guard who originally scanned her
27 items told her that “anaphylaxis is not a disability,” or words to that effect.
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18. After some time, the security personnel told Plaintiff that she was required to surrender the medications or leave, as she was holding up the line. At that point a different security guard approached Plaintiff and told her that she was no longer welcome in the Club, even without her medications. Frustrated, embarrassed and upset, Plaintiff and her husband separated from the rest of the group and were unable to celebrate her birthday in the Club.

19. Prior to this experience, Plaintiff had been able to patronize the Club with her medications without incident or complaint, including, but not limited to, a visit to the Club on or about April 30, 2016. She has also had no issue patronizing other major clubs on the Las Vegas strip with her medications.

20. As a result of her April 20, 2018 experience at the Club, Plaintiff suffered emotional distress. Due to the Club's discriminatory security policies and procedures, she has been deterred from returning to the Club. Unless resolved, these discriminatory policies will continue to deny full and equal access to Plaintiff and to other individuals with food allergies who wish to patronize the Club. Unless resolved, the continuing existence of the Club's discriminatory policies and procedures will result in ongoing and irreparable injury to Plaintiff and other individuals with severe food allergies who are unable to equally access and benefit from Defendant's facilities, amenities, and services.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION: VIOLATION OF TITLE III OF THE ADA

21. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in Paragraphs 1 through 20 of this Complaint.

22. Title III of the ADA provides that "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods,

1 services, facilities, privileges, advantages, or accommodations of any place of public
2 accommodation by any person who owns, leases (or leases to), or operates a place of
3 public accommodation.” 42 U.S.C. §12182(a).

4 23. The Club is a place of public accommodation that is owned and/or
5 operated by Defendant. 42 U.S.C. §12181(7).

6 24. Plaintiff alleges that Defendant has discriminated against her on the
7 basis of her disability in violation of Title III of the ADA and its implementing
8 regulations. Defendant’s discriminatory conduct includes, but is not limited to:

- 9 a) Discriminatory exclusion and/or denial of goods, services, facilities,
10 privileges, advantages, accommodations, and/or opportunities;
11 b) Provision of goods, services, facilities, privileges, advantages, and/or
12 accommodations that are not equal to those afforded non-disabled
13 individuals; and
14 c) Failing to modify its policies, practices or procedures to ensure persons
15 with disabilities are afforded full and equal access to its facilities,
16 services, and amenities.

17 25. Pursuant to the remedies, procedures, and rights set forth in 42 U.S.C.
18 §12188 and 42 U.S.C. §12205, Plaintiff prays for judgment as set forth below.

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20 **SECOND CAUSE OF ACTION: VIOLATION OF NEAA**
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22 26. Plaintiff repleads and incorporates by reference, as if fully set forth again
23 herein, the allegations contained in Paragraphs 1 through 25 of this Complaint.

24 27. The Club is a place of public accommodation that is owned and/or
25 operated by Defendant and, therefore, it must comply with the NEAA, N.R.S.
26 §651.050 *et seq.*

27 28. The NEAA guarantees that persons with disabilities are entitled to the
28 full and equal enjoyment of the goods, services, facilities, privileges, advantages and

1 accommodations of any place of public accommodation. N.R.S. §651.070.

2 29. Plaintiff alleges that Defendant has violated the NEAA by, inter alia,
3 withholding, denying, or depriving, or attempting to withhold, deny, or deprive,
4 Plaintiff of her right to full and equal use of the accommodations, advantages,
5 facilities, privileges, or services offered at the Club, and by failing to modify its
6 policies, practices, and procedures to avoid discrimination based on disability.

7 30. Pursuant to the remedies, procedures, and rights set forth in N.R.S.
8 §651.090, Plaintiff prays for judgment as set forth below.

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10 **VI. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff respectfully requests that this Court issue relief
12 pursuant to Title III of the ADA and the NEAA:

- 13 a) Ordering Defendant to modify its policies, practices, and procedures
14 to ensure persons with disabilities are afforded full and equal access
15 to its facilities, services, and amenities;
16 b) Awarding Plaintiff damages under the NEAA;
17 c) Awarding Plaintiff's attorneys' fees, litigation expenses and costs of
18 suit, pursuant to 42 U.S.C. §12205 and/or the NEAA; and
19 d) Such other and further relief as the Court may deem just and proper.
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22 Dated: July 18, 2018

BLUT LAW GROUP, PC

23 /s/ *Elliot S. Blut*

24 By: _____

ELLIOT S. BLUT

Attorneys for Plaintiff, NATALIE RHONE

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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury as to all issues.

Dated: July 18, 2018

BLUT LAW GROUP, PC

/s/ Elliot S. Blut

By: _____

ELLIOT S. BLUT

Attorneys for Plaintiff, NATALIE RHONE